

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of: )  
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)  
Rules and Policies Concerning )  
Multiple Ownership of Radio Broadcast ) MM Docket 01-317  
Stations in Local Markets )  
)  
Definition of Radio Markets ) MM Docket 00-244  
)  
)

To: FCC / Mass Media Bureau

Comments regarding the NPRM and Further NPRM in above captioned proceedings.

Submitted by: Americans for Radio Diversity (ARD)

Americans for Radio Diversity (ARD) is a small nonprofit organization, composed of concerned radio listener/consumers, dedicated to promoting community oriented public and commercial broadcasting. In interest of this purpose, ARD submits the following comments in the MM 01-317 NPRM and MM 00-244 Further NPRM proceedings.

## I. Statutory Interpretation

In section III.A. of the NPRM the Commission discusses the extent of its authority to regulate local radio ownership under the numerical station limits set by section 202(b) of the 1996 Telecom Act. Three suggested views of this are that the limits alone fully define the public interest (both diversity and competition aspects), that they are to be presumed in the public interest absent specific factors to the contrary in a particular market, or that they address diversity concerns but not competitive ones.

We at ARD certainly do not find the limits to be definitive. Section 202(b) directed the FCC to revise its radio rule, it did not amend or replace sections 309(a) or 310(d) of the 1934 Communications Act from which the Commission derives its public interest mandate. The "savings clause" of the 1996 Act (section 601(c)(1), mentioned in NPRM paragraph 24) reinforces this interpretation. Further, section 202(h) uses the phrase "in the public interest" twice in directing the FCC to evaluate its ownership rules, suggesting that that is still an important Commission function not encapsulated by any single rule.

As to whether the limits do still establish presumably acceptable ownership levels covering not just diversity but also competitive concerns, we note the title of section 202(b)(1) as just being "Local Radio Diversity". Also, section 202(h) requires "review [of] rules adopted pursuant to this section and all... ownership rules biennially... to determine whether any... are necessary... as the result of competition", with repeal or modification of them if not. Since it would be irrational to consider repeal of a section 202 rule under this dictate if it was the rule itself maintaining the competition, this suggests the limits relate to diversity only. On a side note, the same reasoning would seem

to relieve the Commission of the biennial review mandate for any ownership rule intended to promote a competitive environment.

## II. Policy Options

Regarding what approach ought to be taken in addressing proposed local radio station combinations, let us make clear the FCC not only can but should consider public interest factors beyond mere compliance with the numerical limits. There is a wide disparity in the competitive effects between one possible grouping of stations that might for instance have less than a 25% share of the radio advertising market revenue and another group of the same number of stations controlling an 80% or more share.

On the flip side, a reasonably competitive local market is not a proxy for diversity in the sense that it might thereby eliminate the need for numerical limits. We can envision distributions of various size stations such that the ad market might not appear too concentrated but all stations wind up in the hands of a very few owners (probably distant national groups). The presence of independent station owners provides a truer degree of diversity, being more likely locally oriented and not constrained against presenting viewpoints antagonistic toward some portion of a wide ranging conglomerate owner. We are concerned that the Commission more rigorously examine concentration specifically to ensure such independents an opportunity to remain viable and not feel forced to sell out or reduce service.

ARD regrets that it is unable to include with these comments the kind of specific empirical data the FCC expresses a desire for at various points in the NPRM. We suppose that the largest national radio groups may have the resources to produce data appearing to validate whatever conclusions they wish to promote. But we thank the Commission for considering the opinions of us and other informed radio listeners who are concerned about the degree of consolidation in all the media of this country in recent years.

Respectfully,  
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